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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/770,464

02/04/2004

Yuji Hori

118554

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25944 7590 08/21/2008
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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/770,464	Applicant(s) HORI ET AL.	
	Examiner Joseph M. Pelham	Art Unit 3742	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Joseph M. Pelham/
Primary Examiner, Art Unit 3742
8/5/08

Continuation of 11. does NOT place the application in condition for allowance because: The claims are clearly obvious over the combination of Suehiro and Nishijima. Applicant, at page 2 of the Request, has misconstrued the disclosure of Suehiro, averring that because Suehiro teaches an operating mode (called a "control processing" in the instant claims) that starts warm-up operation in response to a copy start instruction (a "copy operation instruction" in the instant claims), and Nishijima discloses the start of a warm-up operation in response to the detection of an original, combining the two "would render both devices unsatisfactory for their intended purpose." However, Suehiro discloses two modes, one in which the device is preheated prior to any copy instruction (when "priority is given to the copy function," Par. [0064]), and the already cited mode in which preheating is not desired because priority is given to the facsimile function (par. [0070]). Nishijima teaches a type of preheating which conserves energy. Suehiro teaches a plurality of device functions (facsimile, copy, etc.), and that preheating is not desirable when the facsimile function is selected but is desirable when the copy function is selected. While the rejection might have been more felicitously formulated using Suehiro as the base reference and Nishijima as the secondary reference, the combination of Nishijima's preheat mode with Suehiro's plurality of functions associated with preheat and 'non-preheat' modes, nevertheless clearly suggests a preheat mode when the copy function has priority (the claimed "first control processing" = Nishijima's warm-up in response to detection of an original) and a non-preheat mode when the facsimile function has priority (the claimed "second control processing" = Suehiro's "normal mode" of warm-up, started only when the copy instruction is issued).

The examiner acknowledges his assurance to Applicant's counsel, Mr. Muffo, during a telephone conversation on 7/31/08, that he would endeavor to suggest amendments to the claims that would place them in condition for allowance. He sincerely regrets that it is not evident that patentable subject matter is present; however, he will diligently review any subsequent proposal by Applicant's.